

COMMITTEE ON REAL ESTATE

July 11, 2017

A meeting of the Committee on Real Estate was held this date beginning at 4:09 p.m. at City Hall, First Floor Conference Room, 80 Broad Street.

Notice of this meeting was sent to all local news media.

PRESENT

Chairman White, Councilmember Waring, Councilmember Moody, and Mayor Tecklenburg **Staff:** Christopher Morgan, Collen Carducci, Frances Cantwell, Chip McQueeney, Rick Jerue, and Bethany Whitaker, Council Secretary

The meeting was opened with an invocation provided by Councilmember Moody.

APPROVAL OF MINUTES

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to approve the minutes of the June 20, 2017 Committee on Real Estate Meeting.

REQUEST APPROVAL TO ENTER INTO A SPECIAL USE PERMIT WITH THE U.S. NATIONAL PARK SERVICE FOR THE FIRST DAY FESTIVAL AT LIBERTY SQUARE. THE PERMIT BEGINS AT 8:30 A.M. ON AUGUST 11, 2017 AND ENDS AT 6.00 P.M. ON AUGUST 13, 2017. THERE IS NO FEE ASSOCIATED WITH THE PERMIT. THE CITY MUST LEAVE THE AREA IN THE SAME CONDITION AS IT WAS FOUND.

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to approve to enter into a Special Use Permit with the U.S. National Park Service for the First Day Festival at Liberty Square.

REQUEST AUTHORIZATION TO EXECUTE THE LEASE AGREEMENT FOR THE CITY TO LEASE 134 CANNON STREET FROM 134 CANNON STREET, LLC, FOR USE AS A CULTURAL ARTS AND PERFORMANCE CENTER. (TMS: 460-11-04-1558)

Colleen Carducci stated that this was a 10 year Lease Agreement with the landlord. The landlord, Patterson Smith, was present, and it was his LLC. It would commence after the landlord improvements were completed. Attached to the Lease were floor plans, building plans, and city comments. The things included in the City comments would be incorporated within the final plans and specs that would be submitted for building permits. Once the building had a certificate of occupancy, then the Lease would commence. It was structured as either February 1, 2018 or the issuances of the final CO. They expected the earliest would be February 1, 2018. The rent would be \$270,000 per year payable in monthly installments and it would increase 2% per year. The City, as tenant, would pay the operating expenses for the building, including the insurance and any taxes.

Councilmember Moody asked if they would enter into leases with people who wanted to use it, or if it would be just a pro-bono type facility for anyone who wanted to use it.

Mayor Tecklenburg said that he would address that question, because this was a facility that would address usage by community cultural arts groups, but not on a pro-bono basis. The City would manage the property through its Office of Cultural Affairs, but he specified in a sent memo that they forecasted that the City would get \$100,000-\$110,000 a year back in rental income from use of the property. It wasn't that they intended to sub-lease the whole property to one user. They envisioned multiple community arts groups to be able to use it. They may have a primary user, not dissimilar to how Charleston Stage Company used the Dock Street Theatre. They could then bring other users that didn't have as big of a program or requirement. It could likely be Pure Theater, which was on King Street now, and had planned for years that the property they rented to be redeveloped. It was likely they could enter a standing agreement with Pure Theater for a certain number of weeks per year, and then have the ability to add art forms and theater concepts. He had no financial interest, but he knew the property well, because when he was a realtor he had the property listed for sale, and he never sold it. What was interesting was that historically, it was built and designed by Herbert Decosta when two churches combined. It was neat that they maintained this building and it would be a great community resource. It wouldn't break even, but they planned to get as much income back as they could.

Councilmember Moody said that he was talking with Mr. Smith before and there was a lady, Susan Irish, and that was her business. She rented that space and it was her livelihood. Cultural Affairs needed to be sensitive, that they weren't giving something away for free. He wouldn't want to be competing on some kind of basis that wasn't competitive. He wouldn't want her to point fingers and say that the City ran her out of business by taking her money and buying a building, and renting it for nothing.

Councilmember Waring said that he did have a couple of questions. He thought it was a great idea. He asked if they had the right to sublease. He might have missed it. Ms. Carducci said that they did. Councilmember Waring said they should have the right to sublease. He was looking for the revenue side. Frances Cantwell said that it was in Paragraph 17. It said 'if the landlord agrees, the tenant shall have the right to enter into various license and facility use agreements'. They would be able to do that with the various people who would occupy. She didn't think they had the right to sublease the entire property to another entity in its entirety. They had a right, as the tenant, to maintain the property and enter into use agreements. They could call it a partial sublease. Mr. Smith said he wasn't sure if that would even describe it. Lease Agreements had a lot of requirements of both tenant and landlord. They wouldn't be looking at the tenant to be involved with a lot of the requirements. Use Agreement was a good term because it would be for a specific time, for a specific use.

Chairman White said he was thinking the same thing. This was something they needed to think through. A Use Agreement was good for short term use, but if they did have an entity like Pure Theater, who had an interest in being in a building for a significant period of time, he thought they would have an interest in having some obligation from them that was substantial more so than a Use Agreement. He thought that for their purposes such as grants or banking, having a Use Agreement versus a Lease could have potential negative impacts on them, which they may not be seeing today. He said that because he sat on the Board for Charleston Stage, so he was familiar with how that worked. He didn't know if it was something they could look at, to make that change, but he thought that could have an unintended consequence for users of the site. There was benefit for the City to be able to have a tenant, like Pure

Theater, committed for a period of time. Councilmember Waring said that they didn't want to get in a squabble. Ms. Cantwell said that if it started acting like a sublease, where it got into a 10 year lease and a 7 year user, they had the right to go to the landlord. They could do it with his consent. Mr. Smith said he had no objection to a change like that. He said that as a landlord, he allowed tenants to sublet, but he also had approval.

Councilmember Waring said that the next thing he saw was that they didn't have an Out Clause. He asked if that was there. There were times when the economy melts down and they had to cut employees. They might have an earthquake or some other catastrophe, and they might have to cut things that don't carry weight. He said that if someone planted a bomb, there would be a catastrophe, but those were things they had to deal with. They were a target and there may come a time when frugality would have to be a part of it. Those were the issues that he saw. He didn't want to have to mention those things, but they were realities they dealt with. He thought that some sort of Out Clause should be applied, given it was as 10 year lease. Ms. Carducci said that in State Leases, they had non-appropriation clauses in the lease, so if something happened, that was there. It was not in their lease.

Mr. Smith stated that the template was similar to another project he did in the early '90s. He became the landlord for DSS in Charleston County. It was a 51,000 square foot office building. He couldn't lease it to the state, because the state had a non-appropriation clause and he couldn't financially handle the upfoot of the building. The County was his tenant, and the County turned around and provided it to the State Department for their services. It wound up being a classic Public-Private partnership, which was what gave him the experience to come before them that day. He had done this kind of project before, and had talked through all the things they were talking about with County Council back in the day. It was a successful project. Councilmember Waring said that at the end of the day, they still needed to look at in the event of an unexpected catastrophe that they would have to deal with that. Councilmember Moody asked if Mr. Smith could get it financed to do the work. It was a risk that they would take. Councilmember Waring said that he had 31 Coming Street and they leased it as a dormitory and had to deal with the same clause in the lease, and they were able to get past it. He asked what the outfit cost would be. Ms. Carducci said that she didn't have any estimates or numbers. Mr. Smith was providing the shell, and so furniture, fixtures, or equipment needed for theater would not come with.

Councilmember Waring thought it was a great idea because a lot of the theatre companies couldn't afford the Gaillard. They may need to tweak it to make it work. Mr. Smith said that Staff had worked for a long time on this and they had dotted every I and crossed every T.

Mayor Tecklenburg said that he wanted to thank Mr. Smith and his son who had worked in good faith to get this to where it was today. He believed that there was risk in everything they did. They had coverage in case there was damage to the building, or some casualty to the building, to get out. Councilmember Moody asked if there was business interruption insurance that they could buy. That would insure the risk. Councilmember Waring said that it couldn't cost too much and that the City should have flexibility. Insurance may be the way to go. Ms. Cantwell stated that the lease did provide, that in the event that something happened to the building, rent would abate as it was being prepared. That helped in that instance but not in the instance of a downturn in the economy. That was a risk that they might take.

Chairman White stated that one thing that might help would be to split up the 10 year term in to two 5 year terms. That could give them the opportunity to have extension options and might mitigate the risk over time. This might not be as beneficial for the property owner, but it would help with the risk. Councilmember Waring said that it would, but what Ms. Cantwell said helped with 3 of the things he had brought up (earthquake, hurricane, bomb). Now, it was just the downturn in the economy.

Mayor Tecklenburg said that Scott Watson couldn't be with them. He was the guy that had worked the other side of this the most. He believed that his numbers were conservative. \$100,000 per year in rental stream from the various groups was achievable. The building had three different functions: one was the performance venue itself, the second was the community room/kitchen, and then the back had four classrooms that could each be licensed in the use agreement to different art forms to give them their own permanent space for the year. He knew there was risk involved but it was not a huge risk and the benefits that they received from cultural arts in the community were multi-fold. He believed that Mr. Smith had done more than a good faith effort. They negotiated and talked about the various scenarios of buy-outs and termination. To get this lease in place will give Staff the ability to cut those deals with Pure Theater and art forms and other groups. Councilmember Waring said that they weren't arguing and they were on the same page. He knew this was good and that Mr. Smith stepped up on this. He was just trying to tweak things and it sounded like 3 of the 4 concerns were already addressed.

Chairman White said that they talked about subsidies and that was effectively what they were doing. He had learned over time that there were things that you don't have a choice with. He would ask that they be cautious how much the subsidy became, because if it became so much so, a subsidy could put other private businesses into jeopardy and it could also cause a lot of inundation of people asking for more subsidies of other types that they may or may not financially be able to provide. He wanted to ask that whoever was negotiating to be mindful of what level of subsidy they were putting in. It needed to be scarce. They may not charge market rent that Pure Theatre was paying on King Street, but it needed to be as close to market as they could for this property type so that they weren't assuming too much subsidy.

Councilmember Waring said that they should say thank you to Mr. Smith for making a wonderful facility. It took some out of the box thinking. Mr. Smith said that it was a privilege and to have career working in the community.

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to authorize to execute the Lease Agreement for the City to lease 134 Cannon Street from 134 Cannon Street, LLC, for use as a cultural arts and performance center.

REQUEST APPROVAL FOR THE MAYOR TO EXECUTE THE RIGHT OF WAY EASEMENT WHEREBY THE CITY GRANTS THE COMMISSIONERS OF PUBLIC WORKS A NON-EXCLUSIVE RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE 99 WEST EDGE PROJECT. (99 WEST EDGE; TMS: 460-00-00-022) THE PROPERTY IS OWNED BY THE CITY OF CHARLESTON.

Ms. Carducci said that at the last meeting they had brought the agreement with the West Edge developer and that street currently was a 60 foot right-of-way and it was being expanded to an 80 foot

right-of-way. CPW had a water line that would run in that 20 foot added width and it was currently on the MUSC stadium ballpark parking lot, so the waterline would run through that section, and eventually be dedicated as part of the right-of-way. The CPW waterline covered in this easement merges with the right-of-way and would become part of it. That would happen later this year or early next year. This was a temporary protection of the water line in the easement.

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to approve the Mayor to execute the Right of Way Easement whereby the City grants the Commissioners of Public Works a non-exclusive right-of-way and utility easement for the 99 West Edge Project.

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A QUITCLAIM DEED TO GADSDEN DEVELOPMENT COMPANY II, LLC CONVEYING TO GADSDEN DEVELOPMENT COMPANY II, LLC ANY INTEREST OF THE CITY TO A STRIP OF LAND CONSTITUTING THE NORTHERN PORTION OF LAURENS STREET AS IT ABUTS TMS. NO. 458-01-02-063, SAID STRIP MEASURING SIX INCHES IN WIDTH BY 341.96 FEET IN LENGTH, FOR A CONSIDERATION OF \$19, 446.12, THE FORM OF SAID QUITCLAIM DEED BEING SUBJECT TO APPROVAL OF THE OFFICE OF CORPORATION COUNSEL.

Ms. Cantwell stated that this was a condominium development going up on the corner of Concord and Lauren Streets. It was right next to Williams Terrace. It would be a nice development and there would be a new public street. As they were driving footings, there was a slip by the surveyor and along the southern end of the property there was an encroachment of a footing anywhere from $\frac{3}{4}$ of an inch up to 4 inches. The developer was asking the City to sell a strip of land 6 inches wide for the length of the parcel, and they were willing to pay the City a square foot price. They thought it was fair and not something they should put out to bid because nobody else would ever have practical use of the strip except for the owner of this land. They were recommending authorization. The reason this was as important as it was, was because these are condominiums that would be individually financed.

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to approve an ordinance authorizing the Mayor to execute on behalf of the city a Quitclaim Deed to Gadsden Development Company II, LLC conveying to Gadsden Development Company II, LLC any interest of the City to a strip of land constituting the northern portion of Laurens Street as it abuts TMS. No. 458-01-02-063, said strip measuring six inches in width by 341.96 feet in length, for a consideration of \$19,446.12, the form of said Quitclaim Deed being subject to approval of the Office of Corporation Counsel.

CONSIDER THE FOLLOWING ANNEXATIONS:

- i. Bender Street (TMS #: 418-07-00-018) 0.13 acre, West Ashley (District 3). The property is owned by the City of Charleston.
- ii. Oakville Plantation Road (TMS #: 317-00-00-007) 18.61 acres, Johns Island (District 5). The property is owned by Keith W. Lackey, et al.

Mr. Morgan said that the Bender Street property was part of the new park land and the Oakville Plantation property was residential and undeveloped. Councilmember Moody asked if the Oakville lot was where the house was and Mr. Morgan said that he believed it was vacant. Councilmember Waring said that there was a house there that they tore down.

On the motion of Councilmember Moody, seconded by Councilmember Waring, the Committee voted unanimously to approve the above annexations.

MISCELLANEOUS BUSINESS

Chairman White said that he wanted to have a brief discussion about the Flagship. They had gotten a package and there had been a lot of moving parts. The lease that they currently had in place had a few triggers, as he recalled, but he didn't remember all of the specifics.

Ms. Cantwell said that they were welcome to discuss, but couldn't take any action.

Chairman White said that the triggers were that they had to break ground in 3 years, and there was another one coming up soon which was the approval of the plans. The one coming up was coming up this month and he had a question because they had received this package that had gotten conceptual approval from BAR. It was an important project. He asked if they had currently met the requirements as it stood in the first trigger. Ms. Cantwell said that she didn't know enough of what had led up to what they had now, because the Lease read that the plans would be approved by the Mayor or his designee and she thought that it had been a rolling process. The City had looked at a set of plans and from there, they went to the BAR for conceptual approval. Now the plans had been refined. She didn't know if the filing that had been given to the Mayor and City Council was the second step to satisfy a trigger. She didn't know the conversations that had been going on between Ernest Andrade, the previous administration, and the current one.

Chairman White asked Mayor Tecklenburg if he or the designee had already approved the plans. Mayor Tecklenburg said that it depended on how they defined approval. He asked the same question himself just recently. The fact that the plans had been submitted to the BAR for approval satisfied him that 'plans had been tendered' and offered to them, and that they had gone through the City process for approval. He deemed them, in his mind, to be accepted by the City. Chairman White said that he wanted to make sure that this project didn't get stalled because of all of the other things that had been happening in that area. Lorelei was a big project and this was tied to it, but they had been working on this for at least 5 years. He and Mr. Andrade had conversations throughout and he kept Council involved, to make sure they were all on the same page. He felt that they were getting to the point that they were going to make significant strides in this project, and he didn't want them to see the project stalled like some of the other things in the area.

Mayor Tecklenburg said that what happened with Lorelei was that a proposed developer had an option to participate in the development of the island, and decided not to proceed. He anticipated something else coming forward with a different developer involved. He thought it was a delay, but didn't think it was 'dead'. It was also independent of the Digital Corridor. Councilmember Moody said that it seemed

to him that this was a key economic piece for the City, and he agreed. His question was that they didn't know anything that had the project stalled. He didn't know if they had hit their trigger. Mayor Tecklenburg said that he believed they had hit it. They had given the plans, gone to BAR, and received Conceptual Approval. He said he could write a letter saying he personally approved it. He hadn't studied the correspondence. They received something from Mr. Andrade last week.

Ms. Carducci said that she, Ms. Cantwell, and all of Council had received an e-mail with the plans. Ms. Cantwell said that there was no legal requirement other than having the plans approved by the Mayor. Chairman White said that was his concern, and this was a critical part of furthering the diversity in that area and the City as a whole. This was the trifecta for taking the Flagship to the next level. He would hate that they missed something to occur, but it sounded like they were all on the same page. He asked Ms. Cantwell that when she was reviewing, if she saw otherwise and they needed to act in some other manner, that at the next meeting they might want to add that to the agenda. Councilmember Waring asked if they could come and give an update at the next meeting and Mayor Tecklenburg said that they would ask them to.

Having no further business, the meeting adjourned at 4:55 p.m.

Bethany Whitaker
Council Secretary